

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 324 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

ASHWINKUMAR GORDHANDAS & BROS

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Appearance:

MR MANISH R BHATT for Petitioner

MR Manish J Shah for JP SHAH for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 23/04/99

ORAL JUDGEMENT (Per R.Balia, J)

The Income-tax Appellate Tribunal, Ahmedabad has referred the following question for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

"Whether, on the facts ad in the circumstances of the case, the Tribunal was right in law in holding that the assessee company was engaged in

manufacturing and processing activities and therefore the provisions of section 104 were not applicable to the assessee?"

2. The matter pertains to the assessment years 1978-79 and 1979-80. The assessee claimed before ITO that it was a company engaged in manufacturing and processing activities and therefore, the provisions of section 104 of the Act were not applicalbe to it. In appeal, CIT (Appeals) allowed the assessee's claim holding that the said provision was not applicable to the facts of the assessee's case. The Tribunal confirmed the decision of the appellate Authority holding that the assessee was entitled to the relief under section 104(4) (a) of the Act.

3. At the hearing, it is pointed out by the learned counsel for the revenue that the question stands convered by the decision of this Court in the assessee's own case which is reported in 212 ITR, 614 (CIT Vs. Ashwinkumar Gordhanbhai and Brothers) in which it was held that the activities pursued by the assessee amounted to "processing". Applying the ration of that decision in the assessee's case, we hold the Tribunal was right in its conclusion that the assessee company was engaged in processing activities and therefore, the provisions of section 104 were not applicable to the assessee. The question referred to us is therefore, answered in the affirmative against revenue and in favour of the assessee. The Reference stands disposed of accordingly with no order as to costs.

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